

Serial No.: 10/749,988
Amendment dated August 8, 2007
Reply to Office Actions of July 10, 2007 and May 14, 2007

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Remarks

Claims 1-26 are pending in the instant application. Claims 2-8, 15, 16, 20, and 22-26 have been withdrawn by the Examiner. Claims 1 and 3-26 form the subject matter of this response. Claim 1 has been amended to include the subject matter of claim 2, and claim 2 has been canceled. As a result, claims 3-5 and 7 have been amended to correct their dependency. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following remarks is respectfully requested.

With respect to the Examiner's withdrawal of claims 2-8, 15, 16, 20, and 22-26 due to a reconsideration of Applicant's election of June 13, 2006, the Applicant maintains his election and the inclusion of the claims improperly withdrawn by the Examiner. The Examiner apparently bases the withdrawal on an inaccurate supposition that a blister package with a living hinge must be made from a single piece of material. First, a blister package can and usually is made from more than one material. Many items are sold in packages having a blister front with a paperboard backing. Many medications are sold in a blister with a foil laminate backing. In addition, the presence of a living hinge does not imply that the entire package is formed with the living hinge. Living hinges alone are commercially available as is known in the art. Other materials or structures may be attached to the living hinges to form a variety of structures. In an illustrative parallel example, a brass door hinge does not imply that the door and the door jam are both formed with the hinge and made from brass. The Applicant respectfully asks the Examiner to clarify the Examiner's conclusion that the blister package "clearly" cannot have first and second pieces of material, or to reinstate claims 3-8, 15, 16, 20, and 22-26.

With respect to the specific points raised by the Examiner in the Office Action dated July 10, 2007, support for these claims may be found in the specification as originally filed as follows:

- A. The first piece of material and the second piece of material have different rigidities: See page 21, line 28 to page 22, line 11 and claims 2 and 22.
- B. The first piece of material is more rigid than the second piece of material: See page 21, line 28 to page 22, line 11 and claims 3 and 23.
- C. The second piece of material is more rigid than the first piece of material: See page 21, line 28 to page 22, line 11 and claims 4 and 24.
- D. The package is vacuum packed: See page 9, line 11 to page 10, line 12; Fig. 9; and claims 8, 16, and 25.
- E. The upper portion of the opening element and the lower portion of the opening element have different rigidities: See page 2, lines 12-13; page 4, lines 12-18; page 13, lines 25-31; page 21, line 28 to page 22, line 11; and claim 20.

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Unless the Examiner can clarify why the bulk of the specification can be ignored with respect to these claims, or why the claims as originally filed are not a part of the specification, sufficient support exists in the specification as originally filed for each of these claims. If it would clarify matters, the Applicant can amend the text of certain sections of the specification to explicitly include the specific text of claims such as claim 3. Such an amendment would not add new matter as the originally-filed claims are a part of the specification.

With respect to the Examiner's deeming claim 21 not to read on the elected embodiment, the language questioned by the Examiner is explained in the present application at page 18, line 23 to page 20, line 6 and is illustrated in Fig. 18A. In general, the language describing the package primarily uses Fig. 11A as an example, but applies to the other packaging figures as well. As explained at page 13, lines 22-23, the tab shown in Fig. 11A is only an example of how any of the packages can include a tab. Numerous figures illustrate variations in sealing and tab positions that may be employed in any of the packaging configurations.

Rejections Under 35 U.S.C. § 102

Trewella does not disclose each and every element of the claimed invention.

By way of the Office Action mailed May 14, 2007, the Examiner rejects claims 1 and 21 under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over U.S. Patent 3,652,006 to Trewella (hereinafter "Trewella"). This rejection is respectfully traversed.

Trewella is directed to a tear-open package and a tear seam therefore. Independent claim 1 of the present invention is directed to a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

The Applicant asserts that Trewella fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 1. Trewella does not disclose, teach, or suggest first and second pieces of materials. As is evident from the figures, Trewella discloses "a tear-open package comprising **only one continuous piece** of flexible packaging material..." Col. 2, lines 19-21 (emphasis added). In addition, because Trewella does not disclose, teach, or suggest first and second pieces of materials, Trewella cannot disclose the first piece of material and the second piece of material having different rigidities.

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Similarly, independent claim 21 of the present invention is directed to a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material. The Applicant asserts that Trewella fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material as required by claim 21. Trewella does not disclose, teach, or suggest first and second pieces of materials. As is evident from the figures, Trewella discloses "a tear-open package comprising **only one continuous piece** of flexible packaging material... ." Col. 2, lines 19-21 (emphasis added).

Accordingly, for at least these reasons, the Applicant respectfully submits that independent claims 1 and 21 are patentable over Trewella. Moreover, claims 3-10 and 22-26, which all eventually depend from claims 1 and 21, are also accordingly patentable over Trewella.

Kozlow does not disclose each and every element of the claimed invention.

By way of the Office Action mailed May 14, 2007, the Examiner rejects claim 1 under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over U.S. Patent No. 4,264,008 to Kozlow (hereinafter "Kozlow"). This rejection is respectfully traversed.

Kozlow is directed to an adhesive bandage and package. Independent claim 1 of the present invention is directed to a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

The Applicant asserts that Kozlow fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 1. Kozlow does not disclose, teach, or suggest first and second pieces of materials having different rigidities. Kozlow discloses two package sides 19, 20 being made from the same material. See col. 3, lines 48-50 and col. 4, lines 64-67.

Accordingly, for at least this reason, the Applicant respectfully submits that independent claim 1 is patentable over Kozlow. Moreover, claims 3-10, which all eventually depend from claim 1, are also accordingly patentable over Kozlow.

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Laipply does not disclose each and every element of the claimed invention.

By way of the Office Action mailed May 14, 2007, the Examiner rejects claim 1 under 35 U.S.C. § 102(b) as allegedly being anticipated, and thus unpatentable, over U.S. Patent No. 4,696,393 to Laipply (hereinafter "Laipply"). This rejection is respectfully traversed.

Laipply is directed to an applicator wipe for inviscid fluids. Independent claim 1 of the present invention is directed to a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

The Applicant asserts that Laipply fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 1. Laipply does not disclose, teach, or suggest first and second pieces of materials having different rigidities. Laipply discloses a package material sheet 92 and a cover sheet 97 being made from the same material. See col. 12, lines 53-66.

Accordingly, for at least this reason, the Applicant respectfully submits that independent claim 1 is patentable over Laipply. Moreover, claims 3-10, which all eventually depend from claim 1, are also accordingly patentable over Laipply.

Rejections Under 35 U.S.C. § 103

Trewella in view of Frank-Farah do not make obvious the claimed invention.

By way of the Office Action mailed May 14, 2007, claim 9 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Trewella in view of U.S. Patent No. 6,640,976 to Franks-Farah et al. (hereinafter "Franks-Farah"). This rejection is respectfully traversed.

As discussed above with respect to claim 1, Trewella fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 9. Trewella does not disclose, teach, or suggest first and second pieces of materials. As is evident from the figures, Trewella discloses "a tear-open package comprising only one continuous piece of flexible packaging material..." Col. 2, lines 19-21 (emphasis added). In addition, because Trewella does not disclose, teach, or suggest first and second pieces of materials, Trewella cannot disclose the first piece of material and the second piece of material having different rigidities. Franks-Farah does not correct this deficiency. Franks-Farah and Trewella,

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alone or in combination, fail to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities.

Accordingly, for at least these reasons, the Applicant respectfully submits that claim 9 is patentable over Trewella in view of Franks-Farah.

Trewella in view of Benoit or Hahn do not make obvious the claimed invention.

Claims 10-14 and 17-19 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Trewella in view of U.S. Patent No. 4,597,494 to Benoit (hereinafter "Benoit") or U.S. Patent No. 4,801,005 to Hahn et al. (hereinafter "Hahn"). This rejection is respectfully traversed.

As discussed above with respect to claim 1, Trewella fails to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities as required by claim 10. Trewella does not disclose, teach, or suggest first and second pieces of materials. As is evident from the figures, Trewella discloses "a tear-open package comprising **only one continuous piece** of flexible packaging material..." Col. 2, lines 19-21 (emphasis added). In addition, because Trewella does not disclose, teach, or suggest first and second pieces of materials, Trewella cannot disclose the first piece of material and the second piece of material having different rigidities. Neither Benoit nor Hahn corrects this deficiency. Benoit, Hahn, and Trewella, alone or in combination, fail to disclose, teach, or suggest a package enclosing a single disposable absorbent article, the package including, *inter alia*, a first piece of material and a second piece of material, wherein the first piece of material and the second piece of material have different rigidities. Accordingly, for at least these reasons, the Applicant respectfully submits that claim 10 is patentable over Trewella in view of Benoit or Hahn.

Neither Trewella nor Benoit or Hahn, alone or together, teach or suggest all the claim limitations of claims 11-14 or 17-19 as required by MPEP §2143. Benoit teaches a roll of large plastic bags manipulated into different configurations. Hahn teaches a pleated rubber-and-cardboard matt used to catch oil during an automobile oil change. The matt may be re-folded and reinserted into its original package.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

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(2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

First, there is no motivation or suggestion in Trewella, Benoit, or Hahn for one of skill in the art to modify the Trewella disclosure to achieve the claimed invention, and the Examiner has not described any practical motivation or suggestion outside of Trewella, Benoit, or Hahn, such as in general knowledge, to do so. Because Trewella doesn't deem the single fold shown in Figs. 1 and 2 important enough to mention, there appears to be no need for significant folding of Trewella's bandage "to facilitate storage and/or transportation," and Trewella's liquids and frozen foods certainly do not need to be folded. Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in modifying Trewella in view of Benoit or Hahn. Trewella has no need of a pleated or folded product or a recloseable lid, as Trewella's package doesn't have a lid. Benoit has no need for a tear open package which would defeat the purpose of organizing a roll of large plastic bags. Hahn has no need for a bandage or a tear open package that can't be reclosed. There is nothing Trewella could gain or improve with reference to Benoit or Hahn, and there is nothing Benoit or Hahn could gain or improve with reference to Trewella. To the contrary, it is readily apparent that when each cited reference is considered in its entirety and taken as a whole, a proper combination of the cited references would not teach the Applicant's claimed invention. Only in light of the Applicant's present disclosure and the impermissible use of hindsight would a person of ordinary skill be directed to the significant changes and modifications needed to reconfigure the various components of the references to arrive at Applicant's claimed invention. As such, the subject matter called for by Applicant's claims is patentable over the cited references.

Therefore, for at least these reasons, the rejection of claims 11-14 and 17-19 is respectfully requested to be withdrawn.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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Respectfully submitted,

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